

UNITED STATES DISTRICT COURT

Western Division for the District of South Dakota

**JAMES NEWELL AND MIA
DIMATTIA**

Plaintiffs,

v.

**WEIRATHER TRUCKING, LLC
AND COLTEN WEIRATHER,**

Defendants.

Civil Action No.

COMPLAINT FOR PERSONAL INJURY AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs, by and through their attorneys of record, and for their Complaint and causes of action against the above-named Defendants, do hereby state and allege as follows:

PARTIES

1. Plaintiff James Newell is a resident of Cheshire County, New Hampshire.
2. Plaintiff Mia DiMattia is a resident of Essex County, Massachusetts.
3. Upon information and belief, Defendant Weirather Trucking LLC (hereafter “Weirather Trucking”) is a South Dakota domestic limited liability company with its principal place of business in Butte County, South Dakota.
4. Upon information and belief, Defendant Colten Weirather is a resident of Butte County, South Dakota.
5. The incident which is the subject matter of this Complaint occurred on Interstate 90, Pennington County, South Dakota, and the amount in controversy exceeds

\$75,000, exclusive of costs and interest. Jurisdiction is properly based upon diversity of citizenship pursuant to 28 U.S.C. §1332.

FACTS

6. On or about August 14th, 2020, Defendant Colten Weirather was operating a commercial trucking vehicle owned by Defendant Weirather Trucking on Interstate 90, westbound in Pennington County. Defendant Weirather was hauling improperly secured round haybales.

7. At all times relevant to this Complaint, Defendant Weirather was acting in the interests of and at the direction of principal Defendant Weirather Trucking.

8. Near the scene of the incident, between mile marker 83 and 84, Interstate 90 is a four -lane interstate. There are two lanes of travel westbound and two lanes of travel eastbound. Between the opposite lanes of travel is a grassy area separating the westbound and eastbound lanes.

9. At approximately the same time and place, Plaintiff James Newell and his passenger Plaintiff Mia DiMattia were also westbound on Interstate 90. Plaintiffs were in the Black Hills for the 2020 Sturgis Motorcycle Rally. At the time, they were enjoying a scenic ride on Mr. Newell's 2006 Harley Davidson Motorcycle.

10. As Plaintiffs began to pass Defendant Weirather in the fast lane of travel, a round haybale became loose and fell right in front of Plaintiffs. Plaintiffs struck the haybale with their motorcycle and crashed at an estimated speed of 70 miles per hour.

11. Defendant Weirather was noted by the on-scene SD Highway Patrolman to be in violation of SDCL §§ 32-15-118, Improperly Loaded Vehicle.

12. The force of the impact and subsequent crash caused severe and

permanent injuries to both Plaintiffs.

13. Plaintiffs have incurred substantial and life altering injuries as a result of Defendants' negligence.

COUNT ONE – NEGLIGENCE – COLTEN WEIRATHER

Plaintiffs, for Count I of their Complaint against the Defendant Weirather, states:

14. Plaintiffs incorporate by reference each and every paragraph set forth herein.

15. Defendant Weirather owed a duty to Plaintiffs, to properly inspect, maintain and secure or cause to properly inspect, maintain and secure the cargo commercially transported.

16. Defendant Weirather improperly inspected, maintained or secured the commercial cargo in a negligent, careless, or unlawful manner, including, but not limited to:

- a. Failing to properly inspect;
- b. Failing to properly maintain;
- c. Failing to properly secure or cause to be secured; and
- d. Failing to prevent freight from dropping, sifting, leaking, or otherwise escaping therefrom.

17. Defendant Weirather's negligence has caused Plaintiffs' damages as set forth herein.

18. Defendant Weirather's negligence as set forth herein were in direct violation of South Dakota law and Federal Motor Carrier rules and regulations and Defendant Weirather is therefore negligent as a matter of law. Such negligence is the

direct and proximate cause of the damages suffered by Plaintiffs.

19. That as a direct and proximate cause of Defendant Weirather's negligence, Plaintiffs have suffered mental and physical injuries and pain; they have suffered and will suffer for the remainder of their lives a permanent impairment which impacts their participation in the normal activities of life; they have suffered loss of enjoyment of life; they have suffered wage loss and loss of earning capacity; and they have incurred substantial medical expenses and will continue in the future to incur medical expenses.

20. Plaintiffs request the Court to allow the jury, in its discretion, to award Plaintiffs interest on the entire amount of their losses commencing on August 14th, 2020.

COUNT TWO – NEGLIGENCE – WEIRATHER TRUCKING LLC

Plaintiffs, for Count II of their Complaint against Defendant Weirather Trucking, states:

21. Plaintiffs incorporate by reference each and every paragraph set forth herein.

22. Defendant Weirather Trucking had a duty to systematically inspect, maintain, secure or cause to be secured, its commercial cargo. Defendant Weirather Trucking also had a duty to ensure its employees and drivers were properly trained.

23. Defendant Weirather Trucking had a duty to ensure its employees and drivers were properly trained.

24. Defendant Weirather Trucking failed to properly maintain, inspect, secure or cause to be secured, its commercial cargo. Rather, Defendant Weirather Trucking allowed its commercial cargo to be transported in a negligent, careless, or unlawful manner, including, but not limited to:

- a. Failing to properly inspect;
- b. Failing to properly maintain;
- c. Failing to properly secure or cause to be secured;
- d. Failing to prevent freight from dropping, sifting, leaking, or otherwise escaping therefrom; and
- d. Failing to properly train or utilizing a driver that failed to properly exercise due care and caution in securing commercial cargo.

25. Defendant Weirather Trucking's negligence as herein set forth was in direct violation of South Dakota law and Federal Motor Carrier rules and regulations and Defendant Weirather Trucking is therefore negligent as a matter of law. Such negligence is the direct and proximate cause of the damages suffered by Plaintiffs.

26. That as a direct and proximate cause of Defendant Weirather Trucking's negligence Plaintiffs have suffered mental and physical injuries and pain; they have suffered and will suffer for the remainder of their lives permanent impairments which restrict them from participating in the normal activities of life; they have suffered loss of enjoyment of life; they have incurred medical expenses and will continue in the future to incur medical expenses; and they have suffered loss of wages and loss of earning capacity.

27. Plaintiff requests the Court to allow the jury, in its discretion, to award Plaintiffs interest on the entire amount of their losses commencing on August 14th, 2020.

WHEREFORE, Plaintiffs, pray for judgment against Defendants as follows:

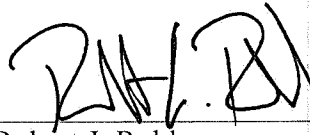
28. That Defendants are found jointly and severally liable for Plaintiffs' damages;

29. For general and special damages in an amount to be determined by the jury, plus prejudgment interest thereon;
30. For Plaintiffs' costs and disbursements herein; and
31. For such other and further relief as the Court deems just and equitable in the premises.

PLAINTIFF REQUESTS TRIAL BY JURY

Dated this 27th day of April, 2021.

By:



Robert J. Rohl
JOHNSON, EIESLAND & ROHL, TRIAL
LAWYERS
Attorneys for Plaintiff
4020 Jackson Boulevard, Suite 1
P.O. Box 6900
Rapid City, SD 57709-6900
(605)348-7300 (Phone)
(605)348-4757 (Fax)
rjr@johnsoneiesland.com

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JAMES NEWELL and MIA DIMATTIA

(b) County of Residence of First Listed Plaintiff Cheshire County, NH
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert J. Rohl, Johnson, Elesland & Rohl, Trial Lawyers
4020 Jackson Blvd, Suite 1, Rapid City, SD 57702
605-348-7300

DEFENDANTS

WEIRATHER TRUCKING, LLC and COLTEN WIERATHER

County of Residence of First Listed Defendant Butte County, SD
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:
Personal injury motor vehicle collision

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
04/27/2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE